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RM-9101

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W. - Room 222
Washington, D.C. 20554

RE: CC Docket No. 96-98

Dear Mr. Caton:

Please accept this corrected original plus four signed copies of WorldCom, Inc.'s Reply Comments on the Petition for Expedited Rulemaking on the above-referenced docket filed July 30th.

Sincerely,

Richard L. Fruchterman/cf

Richard L. Fruchterman III
Director, Government Affairs

cc: Janice M. Myles
Common Carrier Bureau

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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JUL 31 1997

In the Matter of)

Implementation of the Local)
Competition Provisions of the)
Telecommunications Act of 1996)

Petition for Expedited Rulemaking to)
Establish Reporting Requirements and)
Performance and Technical Standards for)
Operations Support Systems)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

CC Docket No. 96-98

RM 9101

REPLY COMMENTS OF WORLDCOM, INC.
ON
PETITION FOR EXPEDITED RULEMAKING

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July 30, 1996

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Before the
FEDERAL COMMUNICATIONS COMMISSION
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REPLY COMMENTS OF WORLDCOM, INC.
ON
PETITION FOR EXPEDITED RULEMAKING

WorldCom, Inc. ("WorldCom") hereby files the following reply comments in support of the petition of LCI International, Inc. ("LCI") and the Competitive Telecommunications Association ("CompTel") for an expedited rulemaking to establish reporting requirements and performance and technical standards for the provision of operations support systems ("OSS") by incumbent local exchange carriers ("LECs", "ILECs" or "incumbents") to competitive local exchange carriers ("CLECs").

I. INTRODUCTION AND SUMMARY

Perhaps US West says it best when it acknowledges that "[c]learly there must be some method by which a determination can be made that ILECs are meeting their obligations under the

Commission's First Report and Order."¹ Establishing a method to determine whether an incumbent LEC is providing its local competitors with non-discriminatory access to OSS is at the heart of the LCI/CompTel petition and provides ample reason for the Commission to initiate the requested rulemaking.

Not surprisingly, all parties that are seeking to compete with the incumbent LECs are sympathetic to the LCI/CompTel request. Significantly, the state commissions that filed comments also note the critical nature of OSS to the development of local competition and urge the Commission to begin the requested rulemaking.²

Predictably, the incumbent LECs, seeking to protect their monopoly positions, oppose the LCI/CompTel petition. Their opposition, however, appears largely to be predicated on a misunderstanding of the relief requested in the petition and urged by other CLECs in their comments. The incumbents object most loudly to the imposition of national OSS performance standards, when what the petitioners are really requesting is simply a way to determine whether they are receiving non-discriminatory access to OSS through the comprehensive reporting of OSS performance. National performance benchmarks would only be applied as a default surrogate to determine parity in the

¹ Opposition of US West at 2.

² See, Comments of the People of the State of California and the Public Utilities Commission of the State of California ("California Comments") and Comments of the Public Service Commission of Wisconsin ("Wisconsin Comments").

absence of data from an incumbent regarding the provision of OSS to itself.

The Commission should initiate a rulemaking to require each incumbent LEC to report the OSS performance levels that it provides to itself and to its competitors in each of the measurement categories set out in the Local Competition Users Group's ("LCUG") Service Quality Measurements that was included with the LCI/CompTel petition. Moreover, to ensure consistent and comparable measurements, the Commission should adopt the measurement methodologies proposed by the LCUG. Finally, to determine if an incumbent LEC is providing non-discriminatory access to its OSS in the event an incumbent fails to provide data regarding its provision of OSS to itself, the Commission should adopt the default performance benchmarks proposed by LCUG as a surrogate for the missing information.

With respect to technical standards, WorldCom would prefer that the appropriate industry bodies continue to develop those standards but with strong encouragement from the Commission that they do so quickly. So that competitors can obtain the full benefit of the technical standards developed by these industry bodies, the Commission should require incumbent LECs to implement any technical standards within a reasonable period of time.

II. THE COMMISSION HAS AMPLE JURISDICTION TO ADOPT RULES REGARDING THE PROVISION OF NON-DISCRIMINATORY ACCESS TO OSS

In its comments, GTE urges the Commission to "defer action on the Petition pending the decision by the U.S. Court of

Appeals [for the Eighth Circuit] on the agency's jurisdiction over unbundled network elements generally, as well as the agency's discretion in adopting requirements for OSSs specifically. These issues have been squarely raised on appeal."³ The Eighth Circuit rendered its decision on July 18. Despite GTE's desires to the contrary, the Court upheld the Commission's jurisdiction over unbundled network elements generally⁴ and over OSS specifically.⁵

The Commission has already found that non-discriminatory access to OSS is critical to the success of local competition. The Commission should now exercise its recently affirmed jurisdiction to adopt rules to help ensure that non-discriminatory access to OSS becomes a reality.

III. THE ILEC ARGUMENTS IN OPPOSITION TO THE INITIATION OF A RULEMAKING PROCEEDING TO ADDRESS NON-DISCRIMINATORY ACCESS TO OSS ARE WITHOUT BASIS

All of the incumbent LECs who filed comments in this proceeding opposed the Commission initiating a rulemaking in response to the LCI/CompTel petition. For the most part, the incumbents oppose such a rulemaking because they do not want national performance standards for OSS to be imposed by the Commission. The incumbent LECs variously argue that such national standards would not be able to take into account local

³ GTE Comments at ii.

⁴ Iowa Utilities Board v. Federal Communications Commission, No. 3321 (8th Cir. decided July 18, 1997) at n. 10.

⁵ Id. at 130, 132.

differences,⁶ that performance standards should be negotiated or arbitrated in the interconnection process,⁷ that setting performance levels is appropriately the role of state commissions,⁸ that national performance standards would result in preferential treatment for CLECs,⁹ and that the adoption of national performance standards would be an unlawful addition to the Telecommunications Act's Section 271 competitive checklist.¹⁰

The incumbents' opposition to the LCI/CompTel Petition is misplaced. The petitioners, and the CLECs who filed comments, are not seeking the adoption of national performance standards. We are seeking non-discriminatory access to the incumbent's OSS as required by the Telecommunications Act of 1996 and the Commission's First Report and Order. To accomplish this, we are asking the Commission to require the incumbent LECs to report to the appropriate regulatory bodies the level of OSS performance that they provide to themselves and the level that they provide to their competitors. Such reports should include all of the relevant measurement categories and, so accurate comparisons can be made, should use a consistent measurement methodology. Only in this manner can the Commission, the state commissions and the

⁶ USTA Comments at 1.

⁷ Ameritech Comments at 6; Bell Atlantic Comments at 3; GTE Comments at 3; Southwestern Bell Comments at 10.

⁸ Bell Atlantic Comments at 4; Southwestern Bell Comments at 11; US West Comments at 13.

⁹ Southwestern Bell Comments at 9; US West Comments at 11.

¹⁰ Bell Atlantic at 3.

CLECs know whether an incumbent is providing non-discriminatory access to its OSS.

National performance standards do have a very limited role and only to the degree that a LEC itself chooses. WorldCom believes that the Commission should adopt national default performance benchmarks that can be applied as surrogates for the incumbent's OSS performance to itself if the incumbent chooses not to produce the data. If the incumbent refuses to provide data, regulatory bodies and competitors still need a method to determine whether an incumbent is providing parity access to its OSS. The default national benchmarks provide the yardstick against which to measure in the absence of data provided by the incumbent LEC. If an incumbent does not like the benchmark, it can simply measure its performance and provide the data -- the application of the benchmark is completely within the hands of the incumbent.

Against the petitioners' actual request for OSS performance measurements and reporting, and default performance benchmarks, the complaints of the incumbent LECs regarding the imposition of national OSS performance standards fall away. There should no longer be a concern about application of single performance standard for all incumbent LECs in all areas of the country. Instead, all that would be required is for the LEC to measure and report its own OSS performance. The default performance benchmarks may be out of reach for some incumbents

but will only apply if the ILEC chooses not to measure and report its performance data.

Similarly, the incumbent LEC argument that performance standards should be negotiated between the parties or arbitrated before a state commission in the context of obtaining an interconnection agreement, has little bearing on the question of whether the Commission should require the incumbent LECs to provide measurements regarding the quality of OSS access that it provides to itself and to its competitors. First, non-discriminatory access to OSS is a requirement of Section 251(c)(3) of the Telecommunications Act of 1996; it is entirely appropriate for the Commission to establish a method to determine whether such non-discriminatory access is being provided.

Second, as Charlotte Terkuerst of the Illinois Commerce Commission staff attested to during the Commission's OSS forum in March, it is difficult for state commissions to impose performance or reporting requirements in the context of a two party arbitration because of the inefficiencies that will be created when subsequent parties seek different requirements in later arbitrations.¹¹ The implication of her comments is that it would be better to adopt industry wide reporting and performance requirements than to rely on the state commissions to do so in the context of an arbitration.

¹¹ Transcripts of Proceedings, In re: Common Carrier Bureau Operations Support Systems Forum, May 28, 1997 at 210.

Third, the limited performance standards that have come from negotiations or arbitrations are minimum performance level standards that have little or nothing to do with the attainment of parity that is at issue here.

Significantly, there would remain a very large role for the state commissions in determining whether the reported level of OSS performance is sufficient for the competitors and citizens of their state. The measurements and reporting that is at issue in the context of this proceeding will be used to determine whether parity exists between the incumbent LEC and its competitors. An incumbent LEC may be able to achieve parity in the provision of OSS with quality at a very low level. It would be left to the several state commissions to determine, separate and apart from the parity question, whether the level of quality is adequate.

Adoption of OSS measurement and reporting requirements, along with default performance benchmarks, will result in non-discriminatory treatment of CLECs, not in the preferential treatment alleged by the ILECs. We do not seek preferential treatment; we do seek equal treatment.

Finally, non-discriminatory access to OSS is required by section 251(c)(3) of the Telecommunications Act. Therefore, it is already a requirement of the competitive checklist which, inter alia, requires "non-discriminatory access to network elements in accordance with requirements of section[]

251(c)(3)."¹² Clearly, a method for determining whether such non-discriminatory access is being provided is not an addition to the competitive checklist, but, in fact, is already contemplated within the checklist.

The incumbent LECs' objections to the initiation of a proceeding to address the non-discriminatory provision of OSS flow from a misunderstanding regarding the application of national performance standards. Since what is being asked for is simply the adoption of OSS performance measurements and reporting requirements, with default performance benchmarks, the incumbent LEC objections miss the mark.

IV. SOME INCUMBENT LECs ARE OPEN TO OSS PERFORMANCE REPORTING REQUIREMENTS FOR PURPOSES OF DETERMINING NON-DISCRIMINATORY ACCESS TO OSS

Some incumbent LECs appear willing to accept OSS performance reporting requirements. In fact, US West seems to propose such reporting as an alternative to the national performance standards that it perceives LCI and CompTel to be seeking when it says

One way some State Commissions are addressing this matter is through actual reporting of ILEC performance associated with OSS access. This allows comparisons and analyses to determine whether there is any discrimination and, if so, whether it is either material or adverse. This is a far more direct and superior method of detecting discrimination than the establishment of national performance standards.¹³

¹² 47 U.S.C. § 271(c)(2)(B)(ii).

¹³ US West at 3.

Although US West would prefer to have the reporting requirements subject to state jurisdiction, WorldCom believes that it is essential for the Commission to adopt the appropriate measurement categories, measurement methodologies and default performance benchmarks to ensure consistency and comparability throughout the country.

In addition, Bell Atlantic and NYNEX appear not to be adverse to the reporting of OSS performance. Bell Atlantic and NYNEX have recently proposed to accept such a reporting requirement as a condition to the Commission's approval of the merger of Bell Atlantic and NYNEX.¹⁴ Although WorldCom has misgivings about the absence of some measurement categories that it feels are necessary and the has some concerns regarding the proposed measurement methodologies, the Bell Atlantic and NYNEX proposal represents an acknowledgement of the need to measure and report on OSS performance and a willingness to do so.

V. THE COMMISSION SHOULD ENCOURAGE THE INDUSTRY TO ACCELERATE THE ADOPTION OF UNIFORM NATIONAL TECHNICAL STANDARDS FOR THE PROVISION OF OSS

WorldCom continues to prefer that the existing industry bodies charged with developing the technical standards for the provision of OSS continue their work. WorldCom also believes, however, that strong encouragement from the Commission for those

¹⁴ See, Ex parte letter from Thomas J. Tauke and Edward D. Young, III to Ms. Kathleen Levitz, In the Matter of the Application of Bell Atlantic Corporation and NYNEX Corporation for Consent to Transfer, NSD-L-96-10 (Tracking No., 96-0221), July 19, 1997.

bodies to complete their work quickly would be helpful. This can be accomplished by 1) requiring monthly updates on status of national technical standards and 2) establishing a deadline for industry action after which the Commission may act on its own.

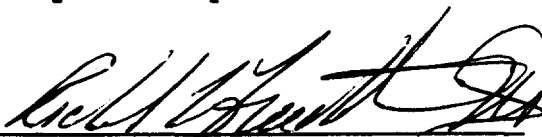
Moreover, as noted in WorldCom's Comments, there is a need for the Commission to take action to ensure that the technical standards that are adopted by the industry bodies are deployed by the incumbent LECs within a reasonable time.¹⁵ It will do no good for the industry to come to consensus on technical standards if the incumbent LECs do not then adopt and implement those standards.

VI. CONCLUSION

For the reasons expressed above, and its original comments, WorldCom urges the Commission to initiate a rulemaking regarding the non-discriminatory access to incumbent LEC OSS.

Respectfully submitted,

July 30, 1997



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¹⁵ WorldCom Comments at 15.

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